

**Sillcocks/Miller Company and Graphic Communications International Union, Local 612M.**  
Case 22-CA-17552

March 6, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On a charge filed by the Union on February 28, 1991, the General Counsel of the National Labor Relations Board issued a complaint on April 12, 1991, against Sillcocks/Miller Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing to recognize the Union as the exclusive collective-bargaining representative of unit employee Luz Saldana, by failing to apply the collective-bargaining agreement with the Union to Saldana, and by unilaterally disregarding the seniority and job-posting provisions of the collective-bargaining agreement with Local 612M. Thereafter, the Respondent filed a timely answer admitting in part and denying in part the allegations in the consolidated complaint and asserting, as affirmative defenses, that it is adhering to an earlier arbitration award and that there is a bona fide question concerning representation.

On August 20, 1991, the Respondent, the General Counsel, and the Union filed a stipulation of facts and joint motion to transfer these proceedings directly to the Board. The parties agree that the charge, complaint, answer, and stipulation, with attached exhibits, shall constitute the entire record in this case and that no oral testimony is necessary or desired by any of the parties. The parties further agree that the stipulation has been entered into by them for the purpose of the above-entitled matters only. The parties waive a hearing before an administrative law judge, the making of findings of fact and conclusions of law by an administrative law judge, and the issuance of a decision by an administrative law judge, and agree to submit this case directly to the Board for findings of fact, conclusions of law, and the issuance of a Decision and Order.

On October 2, 1991, the Deputy Executive Secretary, by direction of the Board, issued an order granting the motion, approving the stipulation, and transferring the proceeding to the Board. Thereafter, the Respondent, the General Counsel, and the Union filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and briefs, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, Sillcocks/Miller Company, a corporation with an office and place of business in Berkeley Heights, New Jersey, is engaged in the business of printing on plastics. During the 12 months preceding issuance of the complaint, the Respondent, in the course and conduct of its business, sold and shipped from its Berkeley Heights facility products, goods, and services valued in excess of \$50,000 directly to points outside the State of New Jersey.

Accordingly, in agreement with the stipulation of the parties, we find that the Respondent is an employer in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICE**

*A. Facts*

Sillcocks Plastics International is the parent company of the Respondent and Daylux, Inc. Since about 1956, the Union has been the designated exclusive collective-bargaining representative of the employees at the Respondent's Berkeley Heights facility in the following appropriate unit:

All employees employed in the fabrication department, lamination department, tool room, maintenance department, material handling department and shipping and receiving.

Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period of December 1, 1989, to November 30, 1992.

On October 10, 1989, the Board certified Graphic Communications International Union, Local 119B-43B (Local 119) as the collective-bargaining representative of a unit of employees at the Daylux facility in Union, New Jersey.

In October 1990, Sillcocks Plastics International notified Local 119 that the Daylux facility would be closing. The closure occurred on January 1, 1991, and a limited portion of the production machinery from the Daylux facility was moved to the Respondent's facility in Berkeley Heights. Subsequently, Local 119 filed a grievance alleging that Sillcocks Plastics International's decision to consolidate bargaining unit work from the Daylux facility with the work of the Respondent's facility violated the recognition and work preservation clauses of the contract between Daylux

and Local 119. Local 119 and Daylux took the matter to arbitration.<sup>1</sup>

On February 19, 1991, the arbitrator issued his decision, ordering that the Respondent dovetail Daylux employees with its employees hired after October 10, 1989, the date of Local 119's certification. The arbitrator further ordered that the Daylux employees retain their status as members of Local 119.

On March 1, 1991, the Respondent laid off employees David Obando and Damaris Ruiz from its fabrication department. On March 4, 1991, in compliance with the arbitrator's award, the Respondent placed former Daylux employee Luz Saldana in its lamination department as a loader. Saldana worked alongside the Respondent's employees doing the same work under the same supervision as those employees represented by the Union. Further, in compliance with the award, the Respondent recognized Local 119 as Saldana's bargaining representative, and applied the terms of its collective-bargaining agreement with Local 119 to Saldana.

Obando and Ruiz filed grievances, alleging that the Respondent had violated the job-posting provision of the contract between the Respondent and the Union by failing to post the job in the lamination department to allow other employees to apply. The grievances further allege that the Respondent violated the seniority provision of the contract with the Union concerning bumping and recall.

#### B. Contentions of the Parties

The General Counsel and the Union contend that the Respondent violated Section 8(a)(5) and (1) by failing to recognize the Union as the exclusive bargaining representative of Saldana, by failing to apply the collective-bargaining agreement to him, and by unilaterally disregarding the job-posting and seniority provisions of the contract. The General Counsel and the Union further contend that deferral to the arbitrator's award is inappropriate where, as here, all the parties with an important interest were not represented at the arbitration proceeding.

The Respondent admits that it failed to honor the recognition, job-posting, and seniority provisions of its contract with the Union with regard to the placement of Saldana, but contends that it should not be penalized for compliance with the arbitrator's award. The Respondent further contends that since both the Union and Local 119 claim representation rights, there should be no finding of a violation of the Act until the issue of representation has been resolved.

<sup>1</sup> Neither the Respondent nor the Union was a party to the arbitration.

#### C. Discussion and Conclusions

We find no merit in the Respondent's contentions. The Respondent in essence contends that the Board should defer to the arbitrator's award. Deferral, however, is clearly inappropriate in light of the fact that neither the Respondent nor the Union were parties to the arbitration nor did the Union agree to be bound. *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082 (1955); *Olin Corp.*, 268 NLRB 573, 573-574 (1984).<sup>2</sup> Further, contrary to the Respondent's contention, we find that no question concerning representation of the former Daylux employees has arisen. Saldana was the only Daylux employee transferred into the bargaining unit, and he does bargaining unit work under the same supervision as other bargaining unit employees. Saldana, therefore, as a member of the bargaining unit, is represented by the Union and is covered by its collective-bargaining agreement with the Respondent.

Accordingly, in view of the Respondent's admission of the complaint allegations, we find that the Respondent, by failing to recognize the Union as the exclusive bargaining representative of unit employee Saldana, by failing to apply the collective-bargaining agreement to Saldana, and by unilaterally disregarding the job-posting and seniority provisions of the collective-bargaining agreement, has violated Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing to recognize the Union as the exclusive bargaining representative of unit employee Luz Saldana, by failing to apply the collective-bargaining agreement to Saldana, and by unilaterally disregarding the job-posting and seniority provisions of the collective-bargaining agreement, the Respondent has committed unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

#### ORDER

The National Labor Relations Board orders that the Respondent, Sillcocks/Miller Company, Berkeley Heights, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

<sup>2</sup> We find it unnecessary to pass on the General Counsel's contention that the arbitrator's decision is clearly repugnant to the purposes and policies of the Act.

(a) Refusing to bargain in good faith with the Union by failing to recognize the Union as the exclusive bargaining representative of unit employee Luz Saldana, by failing to apply the collective-bargaining agreement to Saldana, and by unilaterally disregarding the job-posting and seniority provisions of its collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize the Union as the exclusive bargaining representative of unit employee Luz Saldana and apply the collective-bargaining agreement to him.

(b) Comply with the job-posting and seniority provisions of the collective-bargaining agreement.

(c) Post at its facility, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of this notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with Graphic Communications International Union, Local 612M, by failing to recognize the Union as the exclusive bargaining representative of unit employee Luz Saldana, by failing to apply the collective-bargaining agreement to Saldana, and by unilaterally disregarding the job-posting and seniority provisions of the collective-bargaining agreement for the following appropriate unit:

All employees employed in our fabrication department, lamination department, tool room, maintenance department, material handling department and shipping and receiving.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL recognize the Union as the exclusive bargaining representative of Saldana and apply the collective-bargaining agreement to him.

WE WILL comply with the job-posting and seniority provisions of the collective-bargaining agreement.

SILLCOCKS/MILLER COMPANY